UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

TARTAN TEXTILE

Employer

and Case No. 8-RC-16042

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1

Intervenor

ARAMARK

Employer

and Case No. 8-RC-16051

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1

Intervenor

COYNE TEXTILE SERVICES

Employer

and Case No. 8-RC-16053

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1

Intervenor

UNIVERSAL (SPIRIT)

Employer

and Case No. 8-RC-16054

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1

Intervenor

ARROW UNIFORM RENTAL

Employer

and Case No. 8-RC-16055

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC

Petitioner

and

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1

Intervenor

DECISION, ORDER AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing[1] was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding[2], the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed to the extent consistent with this decision.

[1] Since the petitions involved certain issues which were coextensive in nature and in order to avoid unnecessary costs or delays, on February 23, 2001, the Regional Director issued an Order Consolidating Cases and Rescheduling Hearing..

2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Labor Organizations involved claim to represent certain employees of the Employers.
4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees constitute separate appropriate units[3] for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for Aramark Uniform Services, Inc., Coyne Textile Service, Inc., Van Dyne-Crotty, Inc. D/B/A Spirit Services Co.

> *All full-time and regular part-time hourly rated and piece rate production employees, but excluding all drivers, clerical employees, professional employees, guards and supervisors as defined in the Act.*

The following employees constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for TTSI III D/B/A Tartan Textiles (herein Tartan Textiles):

> *All full-time and regular part-time production employees, but excluding all drivers, office clerical employees, guards and supervisors as defined in the Act.*

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[2] The Intervenor submitted a brief, which has been carefully considered.

[3] The bargaining units are consistent with the stipulations executed by the Intervenor, Petitioner and the Employers on March 22, 2001 in Board Exhibit 2.

The following employees constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for Arrow Uniform, LLP D/B/A Arrow Uniform:

> *All full-time and regular part-time non-probationary, hourly rated and piece rate production employees, but excluding all drivers, clerical employees, professional employees, guards and supervisors as defined in the Act.*

The approximate number of employees in the separate bargaining units is as follows[4]:

TTSI III D/B/A Tartan Textiles:	59
Aramark Uniform Services, Inc.:	67
Coyne Textile Service, Inc.:	47
Van Dyne-Crotty, Inc. D/B/A Spirit Services Co.	74
Arrow Uniform, LLP D/B/A Arrow Uniform.	37

Each Employer operates an industrial laundry establishment located in Cleveland, Ohio except for Tartan Textiles which is located in Youngstown Ohio. Each of the five Employers has a history of collective bargaining with the Intervenor (or "TPIU") representing the same bargaining units sought in the instant petitions.

The Petitioner (or "UNITE") filed a petition seeking to represent employees of Tartan Textiles on April 19, 2000. The then existing contract between Tartan Textiles and the Intervenor expired on June 31, 2000. The Petitioner filed petitions seeking to represent the employees of the four other Employers on May 4, 2000. The then existing contracts between those Employers and the Intervenor expired either on July 31, 2000 or August 1, 2000. In the

[4] At the hearing, the Intervenor submitted Exhibit 6 detailing the approximate number of unit employees located at each Employer's facility as current through March of 2001. The Intervenor argued that Exhibit 6 reflects the high turnover of employees at each Employer's facility to show that the union cards are stale and that the new employees prefer Intervenor as their bargaining representative. The Hearing Officer excluded the exhibit as irrelevant. I agree with the Hearing Officer that the document is not relevant for that purpose. However, I will admit the exhibit only for the limited purpose of obtaining a more accurate number of employees in the bargaining units who are presently employed by each Employer.

five petitions, the Petitioner is seeking to represent the current employees represented by the Intervenor.

The Intervenor contends that it continues to represent the employees in the separate bargaining units and presented three arguments in its brief and at the hearing supporting the dismissal of each petition. First, the Intervenor argues that the Board should enforce the purported settlement agreement between Petitioner and United Food & Commercial Workers Union ("UFCW"), which obligates the Petitioner to withdraw the instant petitions. Second, the Intervenor submits that an election is barred under the contract bar doctrine because it is presently signatory to new contracts with each of the Employers having an effective date of August 1, 2000, with the exception of the Tartan Textile contract which became effective on July 1, 2000. The Intervenor asserts that the petition should be dismissed since the contracts were lawfully negotiated and were ratified by a large percentage of the unit employees. Finally, the Intervenor believes that the authorization cards, which were signed over a year ago, are now stale and should bar an election.

The five Employers support the Intervenor's position that the Board should apply the contract bar rule and dismiss the petitions. The Petitioner, on the other hand, requests the Board to direct elections because it timely filed each petition and provided an adequate showing of interest.

Based on the record as a whole, I find that the Intervenor's arguments are without merit and conclude that elections should be directed in all of these cases except for the petition filed regarding Tartan textile, case No. 8-RC-16042.[5] In the first instance, the evidence establishes

[5] At the hearing, the Intervenor's business representative testified that Tartan Textiles would be closing at the end of March 2001 and would be laying off all bargaining unit employees. Tartan and the Employer were engaged in effects bargaining as of the date of the hearing on March 22, 2001. Since that date, the Employer has indicated, in writing, that the plant has, in fact, closed. Both the Petitioner and Intervenor have confirmed that fact in writing. In

that each petition was timely filed during the window period. The Board has long held that to be timely, a petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. **Leonard Wholesale Meats**, 136 NLRB 1000 (1962). In the instant case, it is undisputed that the Petitioner met these filing deadlines by filing each petition in the period between 90 to 60 days prior to the expiration of the contract.

In its brief, the Intervenor also argues that the Board should enforce the purported settlement agreement between UFCW and Petitioner pursuant to the Board's decision in **Lexington Health Care Group**, 328 NLRB 894. (1999). At the hearing, the Hearing Officer ruled that these documents were not relevant. After considering the Intervenor's brief, I have decided to admit into evidence Intervenor's Exhibit 7 and Petitioner's Exhibits 1 and 2 in order to effectively address Intervenor's argument. The Intervenor relies upon **Lexington** to assert that the Board has jurisdiction to enforce the terms of a draft settlement agreement between Petitioner and UFCW, which the Intervenor contends requires the Petitioner to withdraw the instant petitions.

In **Lexington**, the Board held that an agreement to refrain from organizing certain employees had to be express but did not necessarily have to be included in a collective-bargaining agreement. *See also* **Cessna Aircraft**, 123 NLRB 855 (1959). In **Lexington**, the petitioner, which was the bargaining representative at several of the employer's facilities, entered into negotiations with the employer before the expiration of the existing contracts. During this time, the parties specifically negotiated the execution of a neutrality agreement by the employer and a waiver by the petitioner to curtail union organizing at the unorganized facilities owned by the employer. Both agreements were executed but not included in the collective bargaining

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view of the foregoing, I find that no useful purpose will be served by directing an election at Tartan. **Davey McKee Corp**., 308 NLRB 839 (1992); **M.B. Kahn Construction Co. Inc.**, 210 NLRB 166 (1974); **International**

agreement. Nevertheless, the Board found that both parties intended the agreements to be enforced as evidenced by the record even though the agreements were not attached to the collective bargaining agreement.

The instant cases, however, are distinguishable from **Lexington**. In a letter dated January 24, 2001 addressed to the National Labor Relations Board, John Sweeney, the President of the AFL-CIO, withdrew his request to continue holding the instant petitions in abeyance, since the Article XX procedures under the AFL-CIO constitution were closed.[6]

Further, the settlement agreement involved the Petitioner and the UFCW, not the Intervenor. The agreement only affected Intervenor to the extent that the Intervenor would become a part of UFCW. The draft agreement provides in pertinent part:

> UNITE and UFCW hereby seek to resolve all disputes between them relating to the affiliation with either UNITE or UFCW of the Textile Processors, Service Trades, Health Care, Profession and Technical Employees International Union.("TPIU")

Contrary to Intervenor's assertion, the premise of the draft agreement assumed that the Intervenor would become affiliated with the UFCW. Thus, unless TPIU merged with the UFCW, the UFCW has no interest in the dispute between Petitioner and Intervenor. In fact, in a letter dated March 8, 2001, counsel for UFCW admitted that the "agreement between the UFCW and UNITE was premised upon the anticipated affiliation of the Textile Processors, Service Trades, Health Care, Professional and Technical Union (the "TPSTHCPTU") with the UFCW." UFCW further released UNITE from any obligation under the agreement since no affiliation occurred between UFCW and TPIU. It is clear that the UFCW and UNITE no longer intended to be bound by the purported settlement agreement. Therefore, this settlement agreement is clearly

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Harvester, 73 NLRB 436 (1947). Accordingly, I shall dismiss the petition in Tartan Textiles, 8-RC-16042.

distinguishable from the agreement in **Lexington** and the Intervenor has no rights under the agreement.

Moreover, the efficacy of the purported settlement agreement is tenuous at best. The Intervenor proffered a *draft* settlement agreement with no execution date and signed only by UNITE. Accordingly, a draft settlement agreement under the conditions described above does not override the fact that the Petitioner timely filed the instant petitions, and that elections are warranted.

The Intervenor also contends that the Board should apply the contract bar doctrine under **Hexton Furniture Co.**, 111 NLRB 342 (1955) to dismiss each petition. The contract bar doctrine is inapplicable to these cases because the petitions were timely filed. **Leonard Wholesale Meats**, *supra*; **Deluxe Metal Furniture**, 121 NLRB 995 (1958). This is a dispute between two rival unions seeking to represent the same bargaining units. The fact that the Intervenor negotiated a new contract with each Employer does not bar an election, since the new contracts were not executed before the petitions were filed. *See* **Appalachian Shale Products**, 121 NLRB 1160 (1958).

In addition, while the newly negotiated contacts in the instant cases do not bar elections they may be enforced if the Intervenor wins the elections. In **RCA Del Caribe, Inc.**, 262 NLRB 963 (1982), the Board held that the mere filing of a representation petition by an outside, challenging union does not require or permit an employer to withdraw from bargaining or executing a contract with an incumbent union. The Board further held in **Del Caribe** that if the incumbent union loses the election, any contract executed between the incumbent union and an Employer is null and void. At the same time, if the incumbent prevails in the election, the newly

[6] At the time these petitions were filed, they were held in abeyance pursuant to the invocation of Article XX procedures of the AFL-CIO Constitution to resolve the dispute between UNITE and the UFCW involving the

negotiated contracts will be valid and binding. **Id**. at 966. Therefore, the new contracts between Intervenor and the five Employers in the instant case do not override the fact that the petitions were timely filed.

With respect to the Intervenor's final argument that the union authorization cards are stale, I find that this argument is also without merit. Any objections regarding union cards should have been raised through a motion before the hearing, which the Intervenor failed to do. The determination of the adequacy of the showing of interest is an administrative function reserved for the Board and is not subject to litigation. **General Dynamics Corp**., 175 NLRB 1035 (195). The administrative investigation regarding the showing of interest in this matter revealed that it is sufficient. I note, moreover, that the Board has held that cards dated more than a year prior to the filing of the petition were sufficiently current. **Carey MFG Co.**, 69 NLRB 224 fn. 4 (1946). The Board has also rejected a contention that the showing of interest was stale when the delay in processing a petition to an election was attributable to the employer's unfair labor practices. **Big Y Foods**., 238 NLRB 855 fn. 4 (1978). Though the instant petitions were held in abeyance due to the Article XX procedure instead of any Employer misconduct, the same reasoning is applicable to these cases. Accordingly, the adequacy of the showing of interest has no bearing on the issue of whether a question concerning representation exists. Any questions as to whether particular employees have changed their minds about union representation can be best resolved on the basis of an election by secret ballot. **General Dynamics Corp**., *supra*.

ORDER

It is hereby ordered that the petition in Tartan Textiles, 8-RC-16042 be, and it hereby is, dismissed.

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representation of the employees involved in the instant petitions.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees of Aramark Uniform Services, Inc., Coyne Textiles Services, Inc., Van Dyne-Crotty, Inc., d/b/a Spirit Services Co., and Arrow Uniform, LLP, D/B/A Arrow Uniform, in the separate bargaining units found appropriate at the times and places set forth in the notices of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, AFL-CIO, CLC** *OR* the **TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES UNION LOCAL NO. 1.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by four above-noted Employers with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 2, 2001**.

DATED at Cleveland, Ohio this 18th day of April, 2001.

/s/ John Kollar

John Kollar
Acting Regional Director
National Labor Relations Board
Region 8

347-4040